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HOUSE BILL 261

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO MOTOR VEHICLES; ESTABLISHING A NEW EXPIRATION DATE FOR DRIVER'S LICENSES ISSUED TO CERTAIN FOREIGN NATIONALS; CREATING A LIMITED DRIVING PERMIT FOR UNDOCUMENTED FOREIGN NATIONALS; PROVIDING FOR VOLUNTARY SURRENDER OF CERTAIN DRIVER'S LICENSES AND ISSUANCE OF DRIVING PERMITS; PROVIDING FOR REFUNDS IN CERTAIN CASES; REQUIRING SURRENDER OF CERTAIN LICENSES AFTER DECEMBER 31, 2011; PROVIDING FOR NOTICE; PROVIDING FOR HEARINGS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 66-5-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 227, as amended by Laws 2007, Chapter 316, Section 1 and by Laws 2007, Chapter 317, Section 1) is amended to read:

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1 "66-5-5. PERSONS NOT TO BE LICENSED.--The division shall
2 not issue a driver's license under the Motor Vehicle Code to
3 any person:

4 A. who is under the age of eighteen years, except
5 the division may, in its discretion, issue:

6 (1) an instruction permit to a person who is
7 fifteen years of age or over and who is enrolled in and
8 attending or has completed a driver education course that
9 includes a DWI education and prevention component approved by
10 the bureau or offered by a public school;

11 (2) a provisional license to any person who is
12 fifteen years and six months of age or older:

13 (a) who has completed a driver education
14 course approved by the bureau or offered by a public school
15 that includes a DWI education and prevention component and has
16 had an instruction permit for at least six months; and

17 (b) who has successfully completed a
18 practice driving component;

19 (3) a driver's license to any person who is
20 sixteen years and six months of age or older:

21 (a) who has had a provisional license
22 for the twelve-month period immediately preceding the date of
23 the application for the driver's license;

24 (b) who has complied with restrictions
25 on that license;

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1 (c) who has not been convicted of a
2 traffic violation that was committed during the ninety days
3 prior to applying for a driver's license; and

4 (d) who has not been adjudicated for an
5 offense involving the use of alcohol or drugs during that
6 period and who has no pending adjudications alleging an offense
7 involving the use of alcohol or drugs at the time of
8 application; and

9 (4) to any person who is thirteen years of age
10 or older and who passes an examination prescribed by the
11 division, a license restricted to the operation of a
12 motorcycle, provided:

13 (a) the motorcycle is not in excess of
14 one hundred cubic centimeters displacement;

15 (b) no holder of an initial license may
16 carry any other passenger while driving a motorcycle; and

17 (c) the director approves and certifies
18 motorcycles as not in excess of one hundred cubic centimeters
19 displacement and by rule provides for a method of
20 identification of such motorcycles by all law enforcement
21 officers;

22 B. whose license or driving privilege has been
23 suspended or denied, during the period of suspension or denial,
24 or to any person whose license has been revoked, except as
25 provided in Section 66-5-32 NMSA 1978 and the Ignition

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1 Interlock Licensing Act;

2 C. who is an habitual user of narcotic drugs or
3 alcohol or an habitual user of any drug to a degree that
4 renders the person incapable of safely driving a motor vehicle;

5 D. who is four or more times convicted of driving a
6 motor vehicle while under the influence of intoxicating liquor
7 or narcotic drug regardless of whether the convictions are
8 under the laws or ordinances of this state or any municipality
9 or county of this state or under the laws or ordinances of any
10 other state, the District of Columbia or any governmental
11 subdivision thereof, except as provided in the Ignition
12 Interlock Licensing Act. Five years from the date of the
13 fourth conviction and every five years thereafter, the person
14 may apply to any district court of this state for restoration
15 of the license, and the court, upon good cause being shown, may
16 order restoration of the license applied for; provided that the
17 person has not been subsequently convicted of driving a motor
18 vehicle while under the influence of intoxicating liquor or
19 drugs. Upon issuance of the order of restoration, a certified
20 copy shall immediately be forwarded to the division, and if the
21 person is otherwise qualified for the license applied for, the
22 four previous convictions shall not prohibit issuance of the
23 license;

24 E. who was convicted on or after June 17, 2005 of
25 driving a motor vehicle while under the influence of

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1 intoxicating liquor or drugs pursuant to the laws or ordinances
2 of any other state, the District of Columbia or any
3 governmental subdivision thereof, unless the person obtains an
4 ignition interlock license as provided in the Ignition
5 Interlock Licensing Act for a period of one year for a first
6 conviction; a period of two years for a second conviction; a
7 period of three years for a third conviction; or the remainder
8 of the offender's life for a fourth or subsequent conviction,
9 subject to a five-year review as provided in Subsection D of
10 this section. Upon presentation of proof satisfactory to the
11 division, the division may credit time spent by a person
12 operating a motor vehicle with an ignition interlock or
13 comparable device, as a condition of the person's sentence for
14 a conviction in another jurisdiction pursuant to this
15 subsection, against the ignition interlock time requirements
16 imposed by this subsection. The division shall promulgate
17 rules necessary for granting credit to persons who participate
18 in comparable out-of-state programs following a conviction for
19 driving a motor vehicle while under the influence of
20 intoxicating liquor or drugs. The requirements of this
21 subsection shall not apply to a person who applies for a
22 driver's license ten years or more from the date of the
23 person's last conviction, except for a person who is subject to
24 lifetime driver's license revocation for a conviction in
25 another jurisdiction ~~[pursuant to this subsection];~~

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1 F. who has previously been afflicted with or who is
2 suffering from any mental disability or disease that would
3 render the person unable to drive a motor vehicle with safety
4 upon the highways and who has not, at the time of application,
5 been restored to health;

6 G. who is required by the Motor Vehicle Code to
7 take an examination, unless the person has successfully passed
8 the examination;

9 H. who is required under the laws of this state to
10 deposit proof of financial responsibility and who has not
11 deposited the proof;

12 I. when the director has good cause to believe that
13 the operation of a motor vehicle on the highways by the person
14 would be inimical to public safety or welfare; ~~[or]~~

15 J. as a motorcycle driver who is ~~[less than]~~ under
16 eighteen years of age and who has not presented a certificate
17 or other evidence of having successfully completed a motorcycle
18 driver education program licensed or offered in conformance
19 with rules of the bureau; or

20 K. except as provided in Section 5 of this 2011
21 act, who is not a citizen of the United States and who does not
22 have valid documentation issued by the federal government
23 authorizing the applicant's presence in the United States."

24 SECTION 2. Section 66-5-9 NMSA 1978 (being Laws 1978,
25 Chapter 35, Section 231, as amended) is amended to read:

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1 "66-5-9. APPLICATION FOR LICENSE, TEMPORARY LICENSE,
2 PROVISIONAL LICENSE OR INSTRUCTION PERMIT.--

3 A. An application for an instruction permit,
4 provisional license or driver's license shall be made upon a
5 form furnished by the department. An application shall be
6 accompanied by the proper fee. For permits, provisional
7 licenses or driver's licenses other than those issued pursuant
8 to the New Mexico Commercial Driver's License Act, submission
9 of a complete application with payment of the fee entitles the
10 applicant to not more than three attempts to pass the
11 examination within a period of six months from the date of
12 application.

13 B. An application shall contain the full name,
14 social security number or individual tax identification number,
15 date of birth, sex and New Mexico residence address of the
16 applicant and briefly describe the applicant and indicate
17 whether the applicant has previously been licensed as a driver
18 and, if so, when and by what state or country and whether any
19 such license has ever been suspended or revoked or whether an
20 application has ever been refused and, if so, the date of and
21 reason for the suspension, revocation or refusal. For ~~[foreign~~
22 ~~nationals applying for driver's licenses]~~ an applicant who is a
23 foreign national, who is not a citizen of the United States and
24 who has valid documentation issued by the federal government
25 authorizing the applicant's presence in the United States,

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1 the secretary shall accept the individual taxpayer
2 identification number as a substitute for a social security
3 number [~~regardless of immigration status~~]. Except as provided
4 in Section 5 of this 2011 act, a person who is a foreign
5 national, who is not a citizen of the United States and who
6 does not have valid documentation issued by the federal
7 government authorizing the applicant's presence in the United
8 States is not eligible for a license or permit issued by the
9 department. The secretary is authorized to establish by
10 regulation other documents that may be accepted as a substitute
11 for a social security number or an individual tax
12 identification number.

13 C. An applicant shall indicate whether [~~he~~] the
14 applicant has been convicted of driving while under the
15 influence of intoxicating liquor or drugs in this state or in
16 any other jurisdiction. Failure to disclose any such
17 conviction prevents the issuance of a driver's license,
18 provisional license, temporary license or instruction permit
19 for a period of one year if the failure to disclose is
20 discovered by the department prior to issuance. If the
21 nondisclosure is discovered by the department subsequent to
22 issuance, the department shall revoke the driver's license,
23 provisional license, temporary license or instruction permit
24 for a period of one year. Intentional and willful failure to
25 disclose, as required in this subsection, is a misdemeanor.

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1 D. An applicant [~~less than~~] who is under eighteen
2 years of age and who is making an application to be granted
3 [~~his~~] the applicant's first New Mexico driver's license shall
4 submit evidence that [~~he~~] the applicant has:

5 (1) successfully completed a driver education
6 course that included a DWI prevention and education program
7 approved by the bureau or offered by a public school. The
8 bureau may accept verification of driver education course
9 completion from another state if the driver education course
10 substantially meets the requirements of the bureau for a course
11 offered in New Mexico;

12 (2) had a provisional license for the twelve-
13 month period immediately preceding the date of the application
14 for the driver's license;

15 (3) complied with restrictions on that
16 license;

17 (4) not been convicted of a traffic violation
18 committed during the ninety days prior to applying for a
19 driver's license;

20 (5) not been cited for a traffic violation
21 that is pending at the time of [~~his~~] the application; and

22 (6) not been adjudicated for an offense
23 involving the use of alcohol or drugs during the twelve-month
24 period immediately preceding the date of the application for
25 the driver's license and that there are no pending

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1 adjudications alleging an offense involving the use of alcohol
2 or drugs at the time of ~~[his]~~ the application.

3 E. An applicant who is eighteen years of age ~~[and]~~
4 or over but less than twenty-five years of age and who is
5 making an application to be granted ~~[his]~~ the applicant's first
6 New Mexico driver's license shall submit evidence with ~~[his]~~
7 the application that ~~[he]~~ the applicant has successfully
8 completed a bureau-approved DWI prevention and education
9 program.

10 F. An applicant who is twenty-five years of age
11 ~~[and]~~ or over, who has been convicted of driving under the
12 influence of intoxicating liquor or drugs and who is making an
13 application to be granted ~~[his]~~ the applicant's first New
14 Mexico driver's license, shall submit evidence with ~~[his]~~ the
15 application that ~~[he]~~ the applicant has successfully completed
16 a bureau-approved DWI prevention and education program.

17 G. Whenever an application is received from a
18 person previously licensed in another jurisdiction, the
19 department may request a copy of the driver's record from the
20 other jurisdiction. When received, the driver's record may
21 become a part of the driver's record in this state with the
22 same effect as though entered on the driver's record in this
23 state in the original instance.

24 H. Whenever the department receives a request for a
25 driver's record from another licensing jurisdiction, the record

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1 shall be forwarded without charge.

2 I. This section does not apply to driver's licenses
3 issued pursuant to the New Mexico Commercial Driver's License
4 Act."

5 SECTION 3. Section 66-5-17 NMSA 1978 (being Laws 1978,
6 Chapter 35, Section 239) is amended to read:

7 "66-5-17. USE OF LICENSE FOR IDENTIFICATION.--

8 A. In any criminal prosecution, civil action or
9 administrative proceeding charging violation of a statute,
10 ordinance or regulation concerning the sale, consumption or
11 possession of alcoholic beverages involving minors, proof that
12 the person charged, in good faith, demanded and was shown a
13 valid driver's license shall be valid defense to ~~[such]~~ the
14 prosecution, civil action or administrative proceeding.

15 B. The defense available in Subsection A of this
16 section does not apply to a driving permit issued pursuant to
17 Section 5 of this 2011 act.

18 C. A driving permit issued pursuant to Section 5 of
19 this 2011 act provides for driving privileges only and shall
20 not be used or accepted as proof of personal identification or
21 legal presence in the United States."

22 SECTION 4. Section 66-5-21 NMSA 1978 (being Laws 1978,
23 Chapter 35, Section 243, as amended by Laws 2010, Chapter 42,
24 Section 2 and by Laws 2010, Chapter 70, Section 2) is amended
25 to read:

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1 "66-5-21. EXPIRATION OF LICENSE--FOUR-YEAR ISSUANCE
2 PERIOD--EIGHT-YEAR ISSUANCE PERIOD--RENEWAL.--

3 A. Except as provided in Subsection B or D of this
4 section, Section 66-5-19 NMSA 1978, [~~and~~] Section 66-5-67 NMSA
5 1978 and Section 5 of this 2011 act, all driver's licenses
6 shall be issued for a period of four years, and each license
7 shall expire thirty days after the applicant's birthday in the
8 fourth year after the effective date of the license or shall
9 expire thirty days after the applicant's seventy-fifth
10 birthday. A license issued pursuant to Section 66-5-19 NMSA
11 1978 shall expire thirty days after the applicant's birthday in
12 the year in which the license expires. Each license is
13 renewable within ninety days prior to its expiration or at an
14 earlier date approved by the department; provided that driver's
15 licenses that expire pursuant to Subsection A or B of Section 5
16 of this 2011 act shall not be renewed. The fee for the license
17 shall be as provided in Section 66-5-44 NMSA 1978. The
18 department may provide for renewal by mail or telephonic or
19 electronic means of a driver's license issued pursuant to the
20 provisions of this subsection, pursuant to regulations adopted
21 by the department that ensure adequate security measures to
22 safeguard personal information that is obtained in the issuance
23 of a driver's license. The department may require an
24 examination upon renewal of the driver's license.

25 B. At the option of an applicant, a driver's

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1 license may be issued for a period of eight years, provided
2 that the applicant:

3 (1) pays the amount required for a driver's
4 license issued for a term of eight years;

5 (2) otherwise qualifies for a four-year
6 driver's license; and

7 (3) will not reach the age of seventy-five
8 during the last four years of the eight-year license period or
9 reach the age of twenty-one during any year within the term of
10 the license.

11 C. A driver's license issued pursuant to the
12 provisions of Subsection B of this section shall expire thirty
13 days after the applicant's birthday in the eighth year after
14 the effective date of the license.

15 D. A driver's license issued prior to an
16 applicant's twenty-first birthday shall expire thirty days
17 after the applicant's twenty-first birthday. A driver's
18 license issued prior to an applicant's twenty-first birthday
19 may be issued for a period of up to five years.

20 E. The director may adopt regulations providing for
21 the proration of driver's license fees and commercial driver's
22 license fees due to shortened licensure periods permitted
23 pursuant to Subsection A of Section 66-5-19 NMSA 1978 or for
24 licensure periods authorized pursuant to the provisions of this
25 section."

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1 SECTION 5. A new section of the Motor Vehicle Code is
2 enacted to read:

3 "[NEW MATERIAL] EXPIRATION OF LICENSES ISSUED TO CERTAIN
4 FOREIGN NATIONALS--SURRENDER OF DRIVER'S LICENSES--DRIVING
5 PERMITS--REFUNDS--ENFORCEMENT--IDENTIFYING LICENSES--NOTICE.--

6 A. A driver's license issued or renewed to a
7 foreign national who provided with the application valid
8 documentation issued by the federal government authorizing the
9 foreign national's presence in the United States shall expire
10 on the date of the expiration of the foreign national's
11 documentation authorizing presence in the United States,
12 notwithstanding a later expiration date printed on the driver's
13 license.

14 B. A driver's license issued or renewed to a
15 foreign national who did not provide with the application valid
16 documentation issued by the federal government authorizing the
17 foreign national's presence in the United States shall expire
18 no later than December 31, 2011, notwithstanding a later
19 expiration date printed on the driver's license.

20 C. A foreign national whose driver's license
21 expires pursuant to Subsection A or B of this section may
22 surrender the license to the department on or prior to the
23 expiration date described in those subsections, in which case
24 the department shall issue to the foreign national, at no
25 further cost to the foreign national and valid until December

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1 31, 2012, a driving permit pursuant otherwise to Subsection E
2 of this section.

3 D. After December 31, 2011, a foreign national
4 subject to Subsection A or B of this section who did not
5 surrender a driver's license on or prior to December 31, 2011
6 may apply for a driving permit pursuant to Subsection E of this
7 section.

8 E. On and after July 1, 2011, a person who is a
9 foreign national, who is not a citizen of the United States and
10 who does not have valid documentation issued by the federal
11 government authorizing the person's presence in the United
12 States, but who otherwise meets all of the requirements in the
13 Motor Vehicle Code for the application and issuance of a
14 driver's license, shall be issued a driving permit subject in
15 the same manner as a driver's license to the Motor Vehicle
16 Code, except as provided in this section.

17 F. The driving permit shall be issued for a period
18 of one year from the date of issuance for a fee of ten dollars
19 (\$10.00) plus other fees charged for the issuance of a driver's
20 license. The driving permit may be renewed annually in a
21 manner determined by the department for a fee of ten dollars
22 (\$10.00) plus other fees charged for the renewal of a driver's
23 license.

24 G. The department shall determine a unique form of
25 the driving permit described in this section to include a

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1 conspicuously displayed statement to the effect that the
2 driving permit only provides driving privileges and is not
3 evidence of personal identification in New Mexico or legal
4 presence in the United States.

5 H. If the department determines that a foreign
6 national has paid an amount for a driver's license that expires
7 pursuant to Subsection A or B of this section that is in excess
8 of the cost of issuing a driving permit pursuant to Subsection
9 E of this section, the department shall refund the excess
10 amount to the foreign national.

11 I. After December 31, 2011, when a law enforcement
12 officer in the course of enforcing a provision of the Motor
13 Vehicle Code, except for a provision of this section,
14 encounters a person using a driver's license that expired
15 pursuant to Subsection A or B of this section, the person shall
16 surrender the expired driver's license to the officer and the
17 person shall be in violation of Section 66-5-2 NMSA 1978. The
18 officer shall inform the person of the availability of a
19 driving permit pursuant to this section and shall send the
20 driver's license to the department with a statement summarizing
21 the circumstances of the surrender of the driver's license.

22 J. The department shall identify, through its
23 records, which of the currently issued driver's licenses are
24 those described in Subsections A and B of this section and
25 shall devise a means of identifying those driver's licenses to

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1 law enforcement officers requesting that information.

2 K. No later than July 31, 2011, the department
3 shall send a written notice to the last known address, as shown
4 in the records of the department, of a foreign national whose
5 driver's license the department has identified pursuant to this
6 subsection prior to July 31, 2011, informing the foreign
7 national of the expiration of the license pursuant to this
8 section and the opportunity to surrender the license and to
9 receive a driving permit pursuant to this section. After July
10 31, 2011 and until December 31, 2011, the department shall
11 continue to send the notice to foreign nationals as additional
12 driver's licenses are identified pursuant to this subsection.

13 L. A person required to surrender a driver's
14 license pursuant to Subsection I of this section may request,
15 and the department shall provide, an opportunity for a hearing
16 as early as practicable within not to exceed twenty days, not
17 counting Saturdays, Sundays and legal holidays, after receipt
18 of the request in the county wherein the licensee resides
19 unless the department and the person agree that the hearing may
20 be held in some other county; provided that the hearing request
21 is received within twenty days from the date that the license
22 was surrendered. The director may extend the twenty-day
23 period. At the hearing, the director or the director's duly
24 authorized agent may administer oaths and may issue subpoenas
25 for the attendance of witnesses and the production of

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1 documents. At the hearing, after the introduction of evidence
2 or legal arguments, the director shall determine if the license
3 expired pursuant to this section and was required to be
4 surrendered. If the director determines that the license
5 expired pursuant to this section, the director shall keep
6 possession of the expired license. If the director determines
7 that the license did not expire pursuant to this section, the
8 director shall return the license to the person requesting the
9 hearing and a citation issued for violation of Section 66-5-2
10 NMSA 1978 shall be dismissed."

11 SECTION 6. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2011.

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